

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.8950 OF 2004

Shri.Chandrasen Niranjandrao
Pawar ..Petitioner

Vs.

Rendal Sahakari Bank Ltd.
and Ors. ..Respondents

.....
Dr.V.K.Choudhari for Petitioner
Mr.P.D.Dalvi for respondent nos.1 and 2
Mr.Rajesh Datar for respondent no.3
Mr.M.H.Solkar AGP for respondent nos.4 and 5
.....

CORAM : B.H.MARLAPALLE, J.

DATE : MARCH 23, 2005

P.C.:

1. Heard Dr.Choudhary, the learned counsel for the petitioner, Mr.Dalvi, the learned counsel for the respondents nos.1 and 2 and Mr.Datar, the learned counsel for the respondent no.3.

2. The petitioner was a defaulter borrower of the respondent no.1 bank and therefore, a recovery certificate came to be issued against him. For execution of the recovery order, the Bank proceeded to auction the hypothecated property i.e. the residential bungalow, though the amount under the recovery was about Rs.4,37,000/-. The petitioner was

informed about the date of the auction sale but he did not participate nor did he bring any other party who was willing to quote the highest amount. The auction sale proceeded and Mr.Pandurang Govind Sawant was found to be a successful bidder. On the very next date i.e. on 23.6.2004, the respondent bank issued a notice to the petitioner regarding the auction sale in favour of Mr.Sawant and he was given thirty days time. The petitioner failed to take any steps to remit the amount under recovery. The auction purchaser deposited the total amount and registration fees for sale deed was also remitted in the treasury on 2.9.2004 after the auction sale was confirmed by the Deputy Registrar on 25.8.2004. The petitioner did not object to the confirmation proceedings as well. It appears that for the first time, he approached the bank with Demand Draft No.039704 dated 15.9.2004 for an amount of Rs.4,37,000/- on or about 4.10.2004 and requested the bank to cancel the auction sale on deposit of recovery amount. By its letter dated 4.10.2004, the Bank returned the Demand Draft and informed the petitioner that the auction sale was confirmed and the auction property was duly transferred to Mr.Pandurang Govind Sawant.

3. The petitioner thereafter challenged the confirmation order dated 25.8.2004 by filing Revision

Application No. 235 of 2004 before the Divisional Joint Registrar and the same has been rejected on 21.10.2004, hence, this petition.

4. Dr.Choudhary pointed out that before the petitioner approached the respondent no.1 bank with the demand draft, he had already filed revision application on or about 10.9.2004 and challenged the order of confirmation passed by the Deputy Registrar on 25.8.2004. He also relied upon the decision of this Court in the case of *Balkisan Manekchand Zavar and others Vs. Jalgaon Peoples Co.Operative Bank Ltd. and others*; [1998 (2) Mh.L.J. 147] in support of his contention that the auction sale was not completed and therefore, the revisional authority failed to hold that the confirmation order was required to be set aside.

5. In fact, the Divisional Joint Registrar has noted that the revision was filed on 13.9.2004 and the sale certificate was issued on 25.8.2004 and thus on the date the confirmation certificate was issued there were no proceedings pending before any competent authority. If the revision was filed before the confirmation certificate was issued, the petitioner's case would stand on different footing. Along with the revision application no valuation certificate was produced by the petitioner pointing out that the

market value of the property under auction was much more than the value which it fetched in the auction sale. The revisional authority noted that the auction sale was conducted in keeping with the procedure laid down under Rule 107 of the Maharashtra Co-Operative Societies Rules, 1961. The revisional authority did not accept the valuation report dated 4.10.2004 which was obtained after the revision was filed and the confirmation certificate was issued. The facts in the present case are different from the facts in the case of *Balkisan Manekchand Zavar (supra)*, as relied upon by Dr.Choudhary. In that case, the auction sale money was infact partly deposited after the writ petition was filed and therefore, this Court held that the auction could not be held to be completed when the challenge to the auction proceedings was initiated. The property has been sold for Rs.12,91,000/- and that too based on the valuation certificate, the area of the land on which the bungalow is standing admeasuring about 3113 sq.ft. and the market rate of the land was treated at Rs.150/- sq. foot, the construction costs was also calculated on different slabs for the ground floor, first floor and the second floor and it came to Rs.8,97,525/-. Thus, the total value of the bungalow has been assessed at Rs.13,64,000/-, the depreciation value for 17 years has been deducted at Rs. 2 lakhs and the net sale value was calculated at

Rs.11,64,500/- . The auction sale has fetched the value at Rs.12,91,000/- .

6. Under the circumstances, the challenge raised by the petitioner to the order passed by the revisional authority is devoid of merits and hence, the petition is rejected summarily.

[B.H.MARLAPALLE, J.]